



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2005

Ms. Melinda Ramos
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2005-03412

Dear Ms. Ramos:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 222480.

The City of Fort Worth (the "city") received a request for attendance statistics for a specific entertainment event at the city's convention center. You make no arguments and take no position as to whether the information is excepted from disclosure, but you state that the request may implicate third party proprietary interests. Accordingly, you indicate and provide documentation showing that pursuant to section 552.305 of the Government Code, you notified Feld Entertainment, Inc. ("Feld Entertainment") of the request for information and of its right to submit arguments explaining why any portion of the requested information should not be released to the requestor. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Government Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exceptions to disclosure in certain circumstances). We have received arguments from Feld Entertainment that the requested attendance statistics are excepted from disclosure under sections 552.101, 552.104 and 552.110 of the Government Code. We have considered Feld Entertainment's arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that some of the submitted information is not responsive to the instant request. Information that is not responsive to this request, which we have marked, need not be released. Moreover, we do not address such information in this ruling.

We next address Feld Entertainment's argument that the requested information is protected by its "constitutional and fundamental right to privacy." Section 552.101 of the Government

Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This provision encompasses the doctrines of common law and constitutional privacy. However, these doctrines protect the privacy interests of individuals, not of corporations or other types of business organizations. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also* *U. S. v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.–Houston [14th Dist.] 1989), *rev’d on other grounds*, 796 S.W.2d 692 (Tex. 1990) (corporation has no right to privacy). Accordingly, Feld Entertainment has no privacy interest in the requested information.

Feld Entertainment also argues that the requested information may not be disclosed under section 552.104 of the Government Code. Section 552.104 excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” This section protects the interests of governmental bodies, not third parties. Open Records Decision No. 592 (1991). As the city does not raise section 552.104, this section is not applicable to the requested information. *Id.* (Gov’t Code § 552.104 may be waived by governmental body). The requested information may not be withheld under section 552.104.

We turn now to Feld Entertainment’s claim that the requested information is excepted from disclosure under Section 552.110(b) of the Government Code. This section excepts from disclosure “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999) (stating that business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm); *see also* *National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Having considered Feld Entertainment’s arguments, we find that it has made only conclusory allegations that release of the requested information would cause the company substantial competitive injury and has provided no specific factual or evidentiary showing to support these allegations. Accordingly, no portion of the submitted information may be withheld pursuant to section 552.110(b). All of the requested information must be released to the requestor. We have marked the submitted information accordingly.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

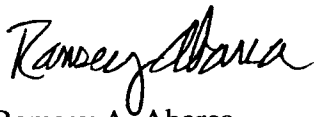
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 222480

Enc. Submitted documents

c: Ms. Jennifer O'Connor
PETA
510 Front Street
Norfolk, Virginia 23510
(w/o enclosures)